

P-555, 421/SA-89-995 ORDER DENYING PETITION, REQUIRING FILED
AGREEMENT AND ESTABLISHING COMMENT PERIOD

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of a Petition to
Change the Service Area Boundary
Between Pine Island Telephone
Company and Northwestern Bell
Telephone Company

ISSUE DATE: December 7, 1990

DOCKET NO. P-555, 421/SA-89-995

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PROCEDURAL HISTORY

On October 31, 1989, Gerald Hesley filed a petition requesting the Commission to change the service area boundary between Pine Island Telephone Company (Pine Island) and Northwestern Bell Telephone Company (Northwestern Bell).

On March 28, 1990, the Minnesota Department of Public Service (the Department) filed its report of investigation and recommendations regarding Mr. Hesley's petition.

On November 20, 1990, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

Prior to moving to his current residence in the Pine Island exchange, Petitioner Hesley had telephone service from NWB at his residence in Rochester, Minnesota. As a subscriber in the Rochester exchange, petitioner had extended area service (EAS) to all the small communities surrounding Rochester. For business reasons, petitioner valued EAS to these surrounding communities and wished to continue receiving such service in his new location in the Pine Island exchange.

Before moving to the Pine Island exchange, petitioner contacted a representative of Pine Island and requested arrangements to continue receiving service from NWB. Wishing to accommodate petitioner's request, Pine Island's representative contacted NWB's field engineer in Rochester. The two companies agreed that

Pine Island would install facilities on its side of the service area boundary and that NWB would install facilities on its side of the boundary to bring service from Rochester. NWB was under the incorrect impression that Pine Island had an adjacent exchange service (AES) tariff on file and that petitioner would be paying Pine Island an AES fee as part of these service arrangements.

By error, one of NWB's installation crews installed facilities from one of NWB's pedestals in the Rochester exchange to petitioner's property, including installation of facilities on Pine Island's side of the service boundary.

From that date to present, NWB has been providing service to petitioner, whose residence is fully in the Pine Island exchange. Because he is currently served from the Rochester exchange, Petitioner has continued to receive extended area service (EAS) to all the small communities surrounding Rochester. If he were served by Pine Island, he would have EAS only to Rochester and Oronoco.

Petitioner has paid NWB charges for facility construction on NWB's side of the exchange boundary but has been charged nothing by either Pine Island or NWB for the inadvertent facility construction on Pine Island's side of the boundary. Nor has Pine Island charged petitioner AES rates, even after filing such rates with the Commission on May 14, 1990.

In support of his request that the Commission change the service boundary to place his property in the NWB exchange, petitioner alleges that:

1. the land on which he currently resides was divided while it was a single unit and the properties to the east and west of it were not divided in the same way;
2. in 1988 when Olmstead County Highway Department widened County Highway 3 necessitating relocation of the telephone lines, NWB offered to extend its service to the property during reconstruction;
3. the argument that boundary lines should follow section lines is not routinely followed and therefore provides no compelling reason to disapprove the petition;
4. the requested boundary change would affect only one party; and
5. he needs to maintain Rochester service to ensure the continuity of his office telephone structure.

Petitioner's Request: Boundary Change

The Minnesota legislature has recognized the desirability of establishing fixed service boundaries for telephone companies so that they can properly plan for the provision of telephone services throughout the service areas assigned to them. Minn. Stat. § 237.16, subd. 2 (1988) provided the manner for telephone companies to secure the location of their service boundaries. Pursuant to this statute, the Commission has issued telephone companies a certificate of territorial authority to continue to serve the areas presently included within the exchange boundaries indicated on exchange boundary maps then on file with the Commission. The statute indicated that unless an interested party filed a complaint within 60 days of the passage of Laws 1961, chapter 637, the boundaries indicated on the maps would become final and the companies' authority to serve customers residing within those boundaries would become fixed.

Once the service area boundaries have been fixed pursuant to Subdivision 2, the statute makes no specific provision for the changing of such lines upon the request of a resident over the objection of the two telephone companies involved.¹ The Commission need not determine the exact source of its authority to entertain such a request at this time because the Commission is not persuaded on the basis of the petitioner's allegations that such a change is in the public interest. The Commission will deny the petition.

In determining the public interest, the Commission has weighed the benefits and detriments of granting the petitioner's request. Among the factors it has considered are the following:

Legislative Policy -- The legislature's policy of promoting the fixed nature of service boundaries is important and should only be deviated from upon a strong showing that deviation from that policy promotes the public interest.

¹ The statute specifically authorizes the Commission to authorize another telephone company to furnish local telephone service to residents within the service area of another telephone company if, pursuant to Minn. Stat. § 237.16, subd. 1, the Commission finds after a public hearing that the public convenience requires the new company's presence. That is not the case here. Petitioner does not request that NWB be allowed to serve within the service territory of Pine Island, but that the boundary lines between the NWB's Rochester exchange and the Pine Island exchange be redrawn to include his residence in the Rochester exchange. Nor is Petitioner's request authorized by Minn. Stat. § 237.16, subd. 4. Subdivision 4 differs from subdivision 1 only in that it appears to govern requests by telephone companies for authority to provide more than local telephone service to end users ("inhabitants").

Service Area Stability -- The Commission's policy preference for boundary lines that follow section lines is valid, promotes reliability and certainty with respect to the location of boundaries, and would be eroded by granting this petition. The fact that many service boundaries in the Petitioner's area may not follow section lines does not indicate that the Commission should abandon this policy preference in instances where the boundary is located on a section line.

NWB Offer Irrelevant -- NWB's offer to extend service to him in Pine Island territory when Olmstead County rebuilt Highway #3 does not indicate that to do so is in the public interest.

No Extenuating Circumstances -- Petitioner has suffered and will suffer no hardship as a result of the existing boundary. It is not necessary to change the service boundary for Petitioner to continue to receive the service he desires from NWB (Rochester exchange service). As a resident in the Pine Island exchange he may continue to receive Rochester exchange local service from NWB simply by paying the adjacent exchange service charge like any other Pine Island exchange resident.

Discriminatory Treatment -- Moreover, compared with his fellow Pine Island residents, Petitioner has received preferential treatment during the years he has resided in the Pine Island exchange. From the day he moved to the Pine Island exchange until May 1990 (the date that Pine Island filed its AES tariff), he received services that were unavailable to his fellow Pine Island exchange residents. Since then he has continued to receive service from the Rochester exchange without paying Pine Island's AES charge, which other Pine Island residents have been required to pay in order to receive service from the Rochester exchange. Granting Petitioner's request would in effect sanction this disparate treatment which has violated Minn. Stat. § 237.09 (1988).

Precedential Effect -- Granting Petitioner's request would not, as he suggests, involve only one party. The Commission may not grant Petitioner's request unless it is prepared to do so upon the request of anyone offering similar reasoning. If the Commission were to begin changing service territories upon the minimal showing that Petitioner has made in this case, the certainty of service lines would disappear throughout the state.

Conclusion -- Having weighed the factors involved in this matter, the Commission finds that the Petitioner has not demonstrated that the requested boundary change serves the public interest. The petition will be denied.

NWB Facilities and Provision of Service in Pine Island's Service Area

In evaluating the Petitioner's request, the Commission finds other issues that require resolution. Minn. Stat. § 237.16, Subd. 1 (1988) prohibits a telephone company from constructing a telephone line for the purpose of furnishing local telephone service in the service area of another telephone company without first obtaining from the Commission a declaration that public convenience requires the construction of such telephone line. By installing facilities in the Pine Island service area to provide local service to the petitioner, NWB violated Minn. Stat. § 237.16, Subd. 1 (1988). More serious, NWB's on-going provision of local service in an area for which it does not have authority violates Minn. Stat. § 237.16, Subd. 4 (1988).²

The Commission seeks to resolve this matter in a manner which upholds the integrity of service areas, maintains service to the petitioner, and provides for the proper ownership and maintenance of the facilities currently used to serve the petitioner. An agreement between the telephone companies that transfers the ownership of these facilities to Pine Island may substantially resolve these issues. The Commission will allow NWB and Pine Island 30 days to file an agreement regarding the ownership and maintenance of the facilities. Once this plan is filed, interested parties will have 10 days to file comments.

ORDER

1. The petition of Gerald Hesley to change the service area boundary between Pine Island Telephone Company and Northwestern Bell Telephone Company is denied.

² There is only one exception to the rule that a telephone company is forbidden from providing local telephone service outside its own service area without receiving specific Commission authority to do so. A telephone company is authorized to provide local telephone service to a person residing outside that telephone company's service area only if the person resides in the service area of a telephone company that offers adjacent area service (AES) and the person subscribes to that service.

Accordingly, NWB's provision of local telephone service to Petitioner, a person residing outside NWB's service area, was unauthorized prior to May 1990 because Pine Island did not offer adjacent area service and has remained unauthorized from May 1990 to the present because the Petitioner has not subscribed to Pine Island's adjacent area service (AES).

2. Within 30 days of this Order, Pine Island Telephone Company and Northwestern Bell Telephone Company shall file with the Commission an agreement regarding the transfer and maintenance of the facilities constructed by Northwestern Bell in the Pine Island service area to serve the petitioner and serve a copy of such agreement upon the parties.
3. Within 10 days of the filing required by Ordering Paragraph 2, any interested party may file comments regarding it.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)